

REMARKS/ARGUMENTS

Claims 1 and 38-76 remain pending in the application. Claims 1 and 38-76 are rejected.

No new matter has been added herein.

CLAIM REJECTIONS35 U.S.C. §103(a) RejectionClaims 1 and 38-76

Claims 1 and 38-76 are rejected under 35 U.S.C. §103(a) as being unpatentable over Menditto et al. (U.S. Patent No. 6,981,029) (hereinafter Menditto) in view of Hospodor (U.S. Patent App. Pub. No. 2003/0021282 A1) (hereinafter Hospodor). The Applicants respectfully submit that the present invention as recited in Claims 1 and 38-76 are not rendered obvious over Menditto in view of Hospodor. The rejection is respectfully traversed for the reasons below.

The present Office Action (mailed November 8, 2007) states on page 4, first full paragraph the following:

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Menditto by incorporating or implementing servicing and assigning streaming media requests to a particular service provider (i.e. stream engine node) for the purpose of providing streaming content to a requestor while meeting quality of service constraints [paragraph 0003].

However, Applicants respectfully submit that the teachings of Mendifito and Hospodor do not render Applicants' claims *prima facie* obvious since Mendifito and Hospodor are unable to be combined without changing each other's principle of operation.

**If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious.** *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959) The court reversed a rejection holding that the "suggested combination of references would require a substantial reconstruction and redesign of, the elements shown in [the primary reference] as well as a change in the basic principle under which the [primary reference] construction was designed to operate." 270 F.2d at 813, 123 USPQ at 352.

The suggested combination of Mendifito and Hospodor would require a substantial reconstruction and redesign of the elements shown in Mendifito because Mendifito contains a server which delivers content, whereas Hospodor specifically does not employ a server to service streaming media requests. For example, Applicants understand Mendifito's intended function is to process a request for information in a network, where the best server to deliver information is determined and used. "The objective of content gateway 18 is to locate the "best" server and network connection for delivering data to client terminal 16, i.e., the server that will deliver the content the fastest with the required security protection." Emphasis added, Mendifito, Column 3, lines 51-55.

In contrast, Applicants understand Hospodor's intended function is to service streaming media requests from a client. More particularly, in Hospodor, “there are no servers through which the streaming data 108 must pass to reach the ultimate requester. Therefore, a QoS constraint can be imposed on the system...”. Hospodor, page 2, paragraph [0028].

Menditto contains a server which delivers content the fastest with the required security protection. This server is necessary for Menditto's operations. Whereas, Hospodor specifically states that no server is used in order that its intended function be accomplished. Combining Menditto and Hospodor changes the principle of operation for both prior art references.

For the foregoing rationale, Claim 1 and Claims 38-76 are not rendered obvious by Menditto in view of Hospodor. As such allowance of Claim 1 and Claims 38-76 are respectfully solicited.

CONCLUSION

In light of the above-listed remarks, reconsideration of the rejected claims is requested.

Based on the arguments presented above, it is respectfully submitted that Claims 1 and 38-76 are overcome the rejections of record. Therefore, allowance of Claims 1 and 38-76 is respectfully solicited.

The Examiner is urged to contact Applicants' undersigned representative if the Examiner believes such action would expedite resolution of the present Application.

Respectfully submitted,  
WAGNER BLECHER, LLP

Date: 2/8/2008

/John P. Wagner, Jr./  
John P. Wagner, Jr.  
Reg. No. 35,398  
123 Westridge Dr.  
Watsonville, CA 95076  
(408) 377-0500